

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4250 OF 2005
WITH
CA/3890/2014 IN WP/4250/2005**

Tulshiram Laxman Naik,
age 59 years, Occ. Nil,
R/o at Post Nalave Khurd,
Tq. Nandurbar, Dist. Dhule. Petitioner.

VERSUS

1. The Union of India,
through Chief Post Master,
General, Maharashtra Circle,
Mumbai 400 001.
2. Post Master General
Aurangabad Region
Aurangabad.
3. The Senior Superintendent
of Post Offices, Dhule Division
C/o Head Post Office Dhule
Dhule 424 001. Respondents.

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Mr. S.M.Kulkarni, Advocate for Petitioner.
Mr. R.B.Bagul Advocate for Respondents No.1 to 3.

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

Dated: October 08, 2015

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ORAL JUDGMENT :- (Per A.V.Nirgude, J.)

1. Heard learned counsel for the respective parties.

2. Facts leading to this petition, in short, can be stated as under :-

The petitioner was appointed as postal assistant in the year 1966. In or about 1995, the petitioner started remaining absent without sanction of leave, etc. In view of this continuous absenteeism, the department started departmental inquiry against him on 29.3.2000. The petitioner submitted rather belatedly his defence statement in the year 2001. The petitioner was provided with assistance of defence officer for the purpose of Departmental inquiry, but unfortunately for the reasons best known to the petitioner, he did not attend the departmental inquiry, at all. A report recording finding that charge was proved was sent to the disciplinary authority. On 5.2.2002, the petitioner was awarded penalty of "removal from service" with immediate effect.

3. On 12.6.2002, the petitioner's disciplinary appeal was also rejected. In 2004, the petitioner's revision also failed. In between, the petitioner had approached the Central Administrative Tribunal on two occasions, but with no avail. This petition was filed in the year 2005

and is pending since last 10 years. In the meantime, the petitioner had reached the age of superannuation, and is now about 70 years old.

4. Having perused the record, we are of the view that, there is only one question that is required to be decided by this Court in this petition. It is “*Whether the penalty awarded to the petitioner was disproportionate to the mis-conduct.*?” Admittedly, the petitioner was not charged with any mis-conduct involving moral turpitude. The petitioner had unblemished service from 1966 to 1995 i.e. almost 30 years. It appears from the record that, the petitioner suffered from personal tragedies in his life in 1994 and thereafter started remaining absent. He remained absent for almost four years unauthorizedly.

5. This of course was an unpardonable misconduct and so we are not inclined to disturb the findings that the petitioner was found guilty of misconduct of absenteeism. The question is, if an employee remained absent after 30 years long service unauthorizedly, and if

it is found that his unauthorized absence amounted to misconduct, what punishment he deserved?. The Disciplinary Authority recorded finding by concurring with the findings recorded by the Inquiry Officer that the petitioner was found irresponsible and lacked devotion to the job. He also came to a conclusion that the petitioner was not an asset to his employer but was a liability. The authority, however, did not discuss as to why he had chosen penalty of dismissal and not other penalty. In this regard, we must refer to Rule 11 of The Central Civil Services, (Classification, Control and Appeal) Rules ,1965. Major penalties are as under :-

“11. Penalties-

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties -

- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii) a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years,

without cumulative effect and not adversely affecting his pension.

- (iv) withholding of increments of pay;

Major Penalties -

- (v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay,
- (vi) reduction to a lower time-scale of pay, grade, post or Service which shall be a bar to the promotion of the Government servant to the time scale of pay, grade, post or Service from which he was reduced, with or without further directions, regarding conditions of restoration to the grade on post or service from which the government servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Provided that, in every case in which the charge of possession of assets disproportionate to known-source of income or the charge of acceptance from any person of any

gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case, for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION - The following shall not amount to a penalty within the meaning of this rule, namely:-

- (i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointment;
- (ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;
- (iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

- (vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;
- (vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;
- (viii) termination of the services -
 - (a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or
 - (b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or
 - (C) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

6. It is clear from this provision that, the disciplinary authority had number of choices. He did not discuss as to why he chose dismissal over other lighter major penalties like compulsory retirement. We hold that, petitioner deserved penalty of compulsory retirement and not dismissal. We also hold that removal was grossly disproportionate to the proved mis-conduct. We

also hold on the basis of the reasons recorded above that the petitioner deserve penalty of compulsory retirement. We, therefore, hold that the petitioner deserve to be compulsory retired on 5.2.2002. The petition would succeed partly in terms following order.

ORDER

I. The penalty awarded to the petitioner stands reduced to compulsory retirement w.e.f. 5.2.2002.

II. The petitioner should be awarded pensionary benefits as per the Rules within SIX (06) months from today.

III. Rule is accordingly made absolute in above terms.

IV. Writ Petition is disposed of. No costs.

V. In view of disposal of writ petition itself, pending civil application also stands disposed of.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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